

Remarks

The Examiner has required, under 35 U.S.C. § 121, restriction to one of the following twenty-one groups of inventions:

- I. Claim 40, drawn to a method for selecting a PapM polypeptide variant, classified in class 435, subclass 7.1.
- II. Claim 41, drawn to a variant of the PapM polypeptide of bacteria of the Streptomyces genus, classified in class 530, subclass 350.
- III. Claim 42, drawn to a method for producing PINH2, classified in class 435, subclass 4+.
- IV. Claims 41 and 2, drawn to a variant polypeptide with G249S, classified in class 530, subclass 350.
- V. Claims 41 and 3, drawn to a variant polypeptide with T192I, classified in class 530, subclass 350.
- VI. Claims 41 and 4, drawn to a variant polypeptide with G249S and T192I, classified in class 530, subclass 350.
- VII. Claims 41, 5, 13 and 15-16, drawn to a nucleic acid, classified in class 536, subclass 23+.
- VIII. Claims 41, 5-8 and 15-16, drawn to a variant nucleic acid with non-conservative amino acid change, classified in class 536, subclass 23+.
- IX. Claims 41, 5-9 and 15-16, drawn to a variant nucleic acid with C658T, classified in class 536, subclass 423+.
- X. Claims 41, 5-6, 10 and 15-16, drawn to a variant nucleic acid with G828A, classified in class 536, subclass 23+.
- XI. Claims 41, 5-8, 11 and 15-16, drawn to a nucleic acid variant with G828A and C658T, classified in class 536, subclass 23.
- XII. Claim 17, drawn to a method for producing a variant of the PapM polypeptide, classified in class 435, subclass 4+.

XIII. Claims 19-21, drawn to a method of modifying the proportion of the various B components of Streptogramin, classified in class 435, subclass 4+.

XIV. Claims 22-26, drawn to a method for producing one or more B components of Streptogramin, classified in class 435, subclass 4+.

Applicants respectfully traverse the restriction requirement with regards to Groups IX, X, XI, XV, XVI and XVII for the reasons stated below.

For a Restriction Requirement to be proper, "there are two criteria for restriction among patentably distinct inventions: (1) The inventions must be independent...or distinct as claimed...and (2) There must be a serious burden on the examiner if restriction is not required." (MPEP §803).

According to the interpretation provided in MPEP §802.01, the term "independent" means that "there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation or effect...". The term "distinct" is defined in MPEP §801.02 as meaning that "two or more subjects as disclosed are related... but are capable of separate manufacture, use or sale as claimed, and ARE PATENTABLE (novel and unobvious) OVER EACH OTHER..." The above-cited language of 35 USC §121 is clear in that the requirement to restrict an application to one of the inventions disclosed therein is proper only if the disclosed inventions are both independent and distinct.

While Applicants take no position on the patentable distinctness of Groups IX, X, XI, XV, XVI and XVII, Applicants submit that the claims of Group IX, X, XI, XV, XVI and XVII are not independent and are so linked as to form a single general inventive concept. In particular, Group XI is drawn to a nucleic acid variant with G828A and C658T, while Group IX is drawn to the sequence but having the nucleic acid variant C658T and Group X is drawn to the same sequence but having the nucleic acid variant G828A.

Moreover, Applicants submit that a search of Groups IX, X and XI would not be an undue burden on the Examiner. A search of Group XI would necessarily include a search of the

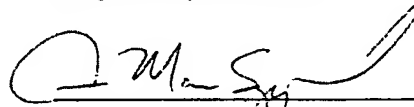
nucleic acid in Groups IX and X since this is the same nucleic acid except for the C658T and G828A substitutions. Therefore, Applicants maintain that the claims of Groups IX, X and XI should be examined together in the interest of compact prosecution of the instant application.

Further, once the search is performed for Groups IX, X and XI the search would necessarily cover subject matter claims of Groups XV, XVI and XVII. Claims of Groups IX, X, XI are drawn to nucleic acid variants of the same sequence while Groups XV, XVI and XVII are drawn to the method wherein a Streptomyces strain comprises the afore-mentioned nucleic acid variants. A search of the nucleic acids of Groups IX, X and XI would necessarily include a search of using the afore-mentioned variants to attain a bacterial strain. It is respectfully submitted that it would not be an undue burden to include the nucleic acid variants and the methods of using said nucleic acid variants at the same time.

For the above reasons, Applicants respectfully request the Examiner to reconsider and withdraw the Restriction Requirement with regards to Groups IX, X, XI, XV, XVI and XVII.

The Commissioner is authorized to charge the proper fee or any additional fee or credit any overpayment necessitated by this response to Deposit Account No. 18-1982.

Respectfully submitted,



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